

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 17 1995
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:

The Commission's Forfeiture Policy
Statement and Amendment of Section 1.80
of the Rules To Incorporate the
Forfeiture Guidelines

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CI Docket No. 95-6

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REPLY COMMENTS OF MOTOROLA INC.

Motorola Inc. ("Motorola") hereby submits its reply to comments filed in the above-captioned proceeding. Motorola supports efforts to provide advance notice to licensees of potential forfeitures as well as attempts to promote uniform assessment of forfeitures from similarly-situated regulatees. However, Motorola believes this proceeding should be coordinated with the FCC's proposed revisions in the antenna structure clearance proceeding.¹ Specifically, as detailed below, Motorola recommends modifying the policies:

- (1) to reflect the primary and ultimate responsibility of site owners for tower compliance;
- (2) to ensure that the total forfeiture imposed on licensees does not exceed the fine that would be applied to a single tower owner in cases where licensees, rather than the site owner, are held responsible for tower violations; and (3) to create an "amnesty" program as new tower registration procedures are implemented to encourage the submission of precise site data.

First, the tower registration proceeding appropriately reflects the recognition that site owners, rather than licensees, should primarily be responsible for ensuring that antenna

¹ See Motorola Comments, Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures, WT Docket No. 95-5 (filed Mar. 21, 1995).

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structures comply with marking, lighting, registration, and other regulations. Indeed, in many cases, licensees that merely rent space on a tower have little control over marking and lighting responsibilities. Moreover, the owner of an antenna structure can make modifications to the structure without notifying the licensee of potential changes that may affect marking, lighting, or other regulatory obligations. Under the circumstances, Motorola believes the Commission's forfeiture guidelines should reflect a similar policy of placing primary and ultimate responsibility for violations of antenna structure regulations on the site owner. The guidelines should explicitly state that the Commission places primary responsibility for compliance with antenna structure regulations on site owners and, accordingly, will attempt to assess forfeitures against the site owner for rule violations prior to issuing notices of apparent liability against licensees leasing antenna space.

Second, in the event the Commission determines it is necessary to impose forfeitures on licensees leasing space on antenna structures rather than the site owner,² the Commission should ensure that the overall forfeiture paid by the individual licensees does not exceed the liability that would have been imposed upon the single tower owner.³ In other words, if the Commission cannot fine the primary party responsible for ensuring tower compliance, each licensee on the tower should not be assessed the full amount of the forfeiture, but rather a *pro rata* share of the liability that would have been imposed on the tower owner. This

² Consistent with its position that site owners should have primary responsibility for compliance with antenna structure regulations, Motorola believes the instances where forfeitures are assessed on licensee/lessees should be extremely limited, *i.e.*, only in cases where the tower owner cannot be located.

³ See PCIA Comments at 1-2 n.4.

distribution of liability among the licensees would appropriately reflect their secondary responsibility to exert influence on tower owners to ensure compliance without imposing draconian penalties for circumstances beyond their control.

Third, Motorola concurs in the National Association of Broadcasters' request to create an "amnesty" period for tower owners during the new registration process.⁴ As mapping data changes, there will inevitably be instances in the new tower registration process where data no longer matches up with prior records. In addition, the existing tower databases may have inconsistencies that may be the result of typographic errors and other mistakes that have been perpetuated through no fault of the licensee or tower owner. Because the new registration process offers a unique opportunity to correct any and all of these inaccuracies, Motorola believes the FCC should offer licensees the ability to correct errors in antenna site data without being exposed to mandatory forfeitures. Accordingly, Motorola suggests that the FCC explicitly allow licensees and tower owners a blanket exemption from the forfeiture guidelines for initial tower registration filings.

Motorola believes that the public interest would be served by ensuring that any forfeiture guidelines that are adopted are consistent with and promote the policies adopted in the new antenna structure proceeding. In order to ensure that both sets of regulations work toward common policy goals, the Commission should explicitly affirm in this proceeding that primary liability for compliance with antenna regulations lies with the site owner; that in cases where primary liability cannot be imposed on the site owner, the secondary liability of licensees leasing antenna space will not, in aggregate, exceed the liability that would be

⁴ NAB Comments at 11-12.

imposed on the site owner; and, that no forfeitures will be imposed for errors discovered and corrected during the initial site registration process. These limited changes to the forfeiture guidelines will contribute to ensuring the safest, most equitable, and most reliable enforcement of tower regulations.

Very respectfully,

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April 17, 1995